

**REGISTERED
SPEED POST**



F.No. 195/149-153/11 -RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.....4/12/12

ORDER NO. 1638-164/12-Cx DATED 3-12-2012 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : REVISION APPLICATION FILED,
UNDER SECTION 35 EE OF THE CENTRAL EXCISE,
1944 AGAINST THE ORDER-IN-APPEAL No.
241-245/CE/APPL/DLH/10 Dated 29-11-2010
passed by Commissioner of Central
Excise (Appeals), Faridabad.

APPLICANT : M/s Polymedicure Ltd.,
Faridabad.

RESPONDENT : Commissioner of Central Excise,
Faridabad.

ORDER

These revision applications are filed by M/s Polymedicure Ltd., Faridabad against the Order-in-Appeal No. 241-245/CE/APPL/DLH/10 Dated 29-11-2010 passed by Commissioner of Central Excise (Appeals), Faridabad with respect to Order-in Original passed by the Assistant Commissioner of Central Excise, Division-IV, Faridabad.

2. Brief facts of the case are that the applicant had filed five rebate claims for rebate of excise duty paid on the excisable goods exported out of India, under Rule 18 of the Central Excise Rules, 2002. They claimed to have exported the Medical Disposables out of India against the ARE-1s, on payment of duty through their Cenvat Credit account. The rebate claims were filed by them along with supporting documents and the adjudicating authority after seeking verification reports from the jurisdictional Range Officer, sanctioned the rebate claims partly in cash/through re-credit in Cenvat account, whereas the remaining part of the rebate claims, were rejected being time barred.

3. Being aggrieved by the said Order-in-Original, applicant filed appeals before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed these revision applications under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 There is no dispute that goods cleared for export were in fact, exported within the specified period. It is only the claim for rebate along with the proof of export, which were submitted beyond the period of one year from the date of export. The authorities below have rejected the claim of rebate as barred by time. even the contention of the applicant that they may be allowed re credit of duty in cenvat credit account, has not been accepted. The exporter should not be denied substantial benefit only for procedural delay.

4.2 The applicant had also executed UT-1 undertaking for clearing goods for export without payment of duty under Rule 19 and in case of such export, no amount of duty was required to be paid. Now, when the applicant cleared goods under claim for rebate on payment of duty, the same is in the nature of security which has to be refunded on proof of export of goods, just as re-credit in running bond account.

4.3 When the bond amount has to be re-credit on export of goods, the same treatment may be given to amount debited in cenvat account instead of UT-1. The exporter should not be made to suffer for procedural lapse if any, when the fact of actual export of goods stands satisfied.

4.4 There is no period of limitation for claimed rebate of duty under rule 18. No period of limitation has also been prescribed under Notification No. 42/2001 dt. 26-06-2001, which has been issued under the said rule prescribing the procedure to be followed for claiming rebate of duty. There is no condition in the said rule or notification that period of limitation as contained in section 11B of the act shall apply.

4.5 The law stand settled that the limitation of section 11B of the act should not be applied for rebate claim filed under rule 18 of the rules. The reliance is placed on the judgment of the Bombay high court in the case of Uttam Steels Limited Vs. UOI reported as 2003 (158) ELT 274 (Bom.)

5. Personal hearing scheduled in this case on 10-10-2012/12-10-2010. Hearing on 12-10-2012 was attended by Shri R.K.Sharma, advocate on behalf of the respondent who reiterated the grounds of Revision Application. The applicant also relied upon Hon'ble Madras High Court's judgment in the case of Dorcas Market Makers Private Ltd., Chennai Vs. Deputy Commissioner of central Excise, Chennai. The department vide their written submission dated 03-10-2012 mainly re-iterated the contents of impugned order.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that applicants exported the goods on payment of duty. The original authority treated the claim as 'time barred' being filed after stipulated one year period from the date of export and accordingly, vide impugned Orders-in-Original rejected the claims as 'time barred'. Commissioner (Appeals) upheld impugned Orders-in-Original. Now, applicant has filed these revision applications on ground mentioned in para (4) above.

8. Government notes that applicant has contended that time limitation of one year of section 11B of Central Excise Act, 1944 does not apply to rebate claim filed under rule 18 of Central Excise Rules, 2002. In this regard it is observed that as per explanation (a) to section 11B, refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. As such the rebate of duty on goods exported is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 subject to the compliance of provisions of section 11B of Central Excise Act, 1944. The explanation A of section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since the refunds claim is to be filed within one year from the relevant date, the rebate claim is also required to be filed within one year from the relevant date. As per explanation B(a)(i) of Section 11B, the relevant date for filing rebate claim means:-

"(a) *in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods.-*

(i) *If the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are load, leaves India, or"*

There is no ambiguity in provision of section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims. The instruction issued by CBEC as contained in

chapter 8 para 1 of CBEC Central Excise Manual of supplementary instructions also clarify the said position. The said paras are extracted below:

" 1. Introduction

1.1 The conditions and procedure relating to export under claim of rebate are contained in Notification 19/2004-Central Excise (NT) dated 06 September 2004 and notification No. 20/2004-CE (NT) dated the 06 September, 2004 issued under rule 18 of the Central Excise Rules, 2002.

1.2 It is worth mentioning that as per the definition of the term 'refund' in section 11B of the Central Excise Act, 1944 refund includes 'rebate' of duty of excise on excisable goods out of India or on excisable materials used in the manufacture of good which are exported out of India. Thus, the procedure specified in the said Rules and the notification issued there under are subject to section 11B of the said Act. "

9. Applicant has given various reasons for filing rebate claim after a stipulated period of one year. In addition, he contended that delay in filing rebate claim is a procedural lapse and same may be condoned as the substantial benefit cannot be denied to them due to procedural infractions. In this regard, Government observes that filing of rebate claim within one year is a statutory requirement which is to be complied with mandatorily. The statutory requirement can be condoned only if there is such provisions under Section 11B. Since there is no provision for condonation of delay in terms of Section 11B, the rebate claim has to be treated as time barred.

10. Government find support from the below mentioned judgments for the proposition that rebate claim filed after one year time limit stipulated in section 11B of Central Excise Act, 1944 being time barred is liable to be rejected.

10.1 Hon'ble High Court of Gujrat in its order dated 15.12.2011 in the case of IOC Ltd. Vs. UOI (SCA No. 12074/2011) has held as under:-

"We are unable to uphold the contention that such period of limitation was only procedural requirement and therefore could be extended upon showing sufficient cause for not filing the claim earlier. To begin with, the provisions of Section 11B itself are sufficiently clear. Sub-section (1) of Section 11E, as already noted, provides that any person claiming refund of any duty of excise may make an application for refund of such duty before the

expiry of one year from the relevant date. Remedy to claim refund of duty which is otherwise in law refundable therefore, comes with a period of limitation of one year. There is no indication in the said provision that such period could be extended by the competent authority on sufficient cause being shown.

Secondly, we find that the Apex Court in the case of Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 had the occasion to deal with the question of delayed claim of refund of Customs and Central Excise. Per majority view, it was held that where refund claim is on the ground of the provisions of the Central Excise and Customs Act whereunder duty is levied is held to be unconstitutional, only in such cases suit or writ petition would be maintainable. Other than such cases, all refund claims must be filed and adjudicated under the Central Excise and Customs Act, as the case may be. Combined with the said decision, if we also take into account the observations of the Apex Court in the case of Kirloskar Pneumatic Company (supra), it would become clear that the petitioner had to file refund claim as provided under Section 11B of the Act and even this Court would not be in a position to ignore the substantive provisions and the time limit prescribed therein.

The decision of the Bombay High Court in the case of Uttam Steel Ltd. (supra) was rendered in a different factual background. It was a case where the refund claim was filed beyond the period of six months which was the limit prescribed at the relevant time, but within the period of one year. When such refund claim was still pending, law was amended. Section 11B in the amended form provided for extended period of limitation of one year instead of six months which prevailed previously. It was in this background, the Bombay High Court opined that limitation does not extinguish the right to claim refund, but only the remedy thereof. The Bombay High Court, therefore, observed as under :

"32. In present case, when the exports were made in the year 1999 the limitation for claiming rebate of duty under Section 11B was six months. Thus, for exports made on 20th May 1999 and 10th June 1999, the due date for application of rebate of duty was 20th November 1999 and 10th December, 1999 respectively. However, both the applications were made belatedly on 28th December 1999, as a result, the claims made by the petitioners were clearly time-barred. Section 11B was amended by Finance Act, 2000 with effect from 12th May 2000, wherein the limitation for applying for refund of any duty was enlarged from 'six months' to 'one year'. Although the amendment came into force with effect from 12th May, 2000, the question is whether that amendment will cover the past transactions so as to apply the extended period of limitation to the goods exported prior to 12th May 2000 ?"

10.2 The Hon'ble CESTAT, South Zonal Bench, Chennai in the case of Precision Controls vs. Commissioner of Central Excise, Chennai 2004 (176) ELT 147 (Tri.-Chennai) held as under:

"Tribunal, acting under provisions of Central Excise Act, 1944 has no equitable or discretionary jurisdiction to allow a rebate claim de hors the limitation provisions of Section 11B ibid – under law laid down by Apex Court that the authorities working under Central Excise Act, 1944 and Customs Act, 1962 have no power to relax period of limitation under Section 11B ibid and Section 27 ibid and hence powers of Tribunal too, being one of the authorities acting under aforesaid Acts, equally circumscribed in regard to belated claims –

Section 11B of Central Excise Act, 1944 – Rule 12 of erstwhile Central excise Act, 1944 – Rule 18 of the Central Excise Rules, 2002. – Contextually, in the case of Uttam Steel Ltd. also, the Hon'ble Bombay High Court allowed a belated rebate claim in a writ petition filed by the assessee. This Tribunal, acting under the provisions of the Central Excise Act, has no equitable or discretionary jurisdiction to allow any such claim de hors the limitation provisions of Section 11B."

10.3 Further, it has been held by the Hon'ble Supreme Court in the case of Collector Land Acquisition Anantnag & Others vs. Ms. Katji & Others reported in 1987 (28) ELT 185 (SC) that when delay is within condonable limit laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following guidelines laid down in the said judgment. But when there is no such condonable limit and the claim is filed beyond time period prescribed by statute, then there is no discretion to any authority to extend the time limit.

10.4 Hon'ble Supreme Court has also held in the case of UOI vs. Kirloskar Pneumatics Company reported in 1996 (84) ELT 401 (SC) that High Court under Writ jurisdiction cannot direct the custom authorities to ignore time limit prescribed under Section 27 of Customs Act, 1962 even though High Court itself may not be bound by the time limit of the said Section. In particular, the Custom authorities, who are the creatures of the Customs Act, cannot be directed to ignore or cut contrary to Section 27 of Customs Act. The ratio of this Apex Court judgment is squarely applicable to this case, as Section 11B of the Central Excise Act, 1944 provides for the time limit and there is no provision under Section 11B to extend this time limit or to condone any delay.

10.5 In a very recent judgement, Hon'ble High Court of Bombay in the case of Everest Flavours Ltd. Vs. UOI reported as 2012 (282) ELT 481 (Bom) vide order dated 29.03.2012 dismissed a WP No. 3262/11 of the petitioner and upheld the rejection of rebate claim as time barred in terms of section 11B of Central Excise Act 1944. Hon'ble High Court has observed in para 9, 11 & 12 of its judgement as under:-

" 9. A judgment of the Madras High Court in **Dorcas Market Makers Private Limited, Chennai Vs. CIT (Appeals)**² was sought to be relied upon to submit that Section 11B of the Central Excise Act would not operate in respect of an application under Rule 18 of the Central Excise Rules, 2002. The learned Single Judge of the Madras High Court held that when a statutory Notification which was issued under Rule 18 does not prescribe any time limit, Section 11B would not be attracted. With respect, the learned Single Judge of the

Madras High Court has not had due regard to the specific provision of Explanation (A) to Section 11B of the Act under which the expression "refund" is defined to include rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of such goods. The judgment of the Supreme Court in *Raghuvar* which has been relied upon by the learned Single Judge of the Madras High Court has already been considered hereinover.

11. Finally it has been sought to be urged that the filing of an export promotion copy of the shipping bill is a requirement for obtaining a rebate of excise duty. This has been contraverted in the affidavit in reply that has been filed in these proceedings by the Deputy Commissioner (Rebate), Central Excise. Reliance has been placed in the reply upon Paragraph 8.3 of the C.B.E. & C. Manual to which a reference has been made above, and on a Trade Notice dated 1 June 2004 which is issued by the Commissioner of Central Excise and Customs Paragraph 8.3 of the Manual makes it abundantly clear that what is required to be filed for the sanctioning of a rebate claim is, inter alia, a self-attested copy of the shipping bill. The affidavit in reply also makes it clear that under the Central Excise rules, 2002 there are two types of rebates: (i) A rebate on duty paid on excisable goods and (ii) A rebate on duty paid on material used in the manufacture or processing of such goods. The first kind of rebate is governed by Notification No. 19/2004 dated 6 September 2004. In the case of the rebate on duty paid on excisable goods, one of the documents required is a self-attested copy of the shipping bill. For the second kind of rebate a self-attested copy of the export promotion copy of the shipping bill is required. Counsel appearing on behalf of the petitioner sought to rely upon a Notification issued by the Central Board of Excise and Customs on 1 May 2000. However, it is abundantly clear that this Notification predates the Manual which has been issued by the Central Board of Excise and Customs. The requirement of the Manual is that it is only a self-attested copy of the shipping bill that is required to be filed together with the claim for rebate on duty paid on excisable goods exported.

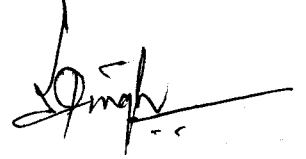
12. For the aforesaid reasons, we hold that the authorities below were justified in coming to the conclusion that the petitioner had filed an application for rebate on 17 July 2007 which was beyond the period of one year from 12 February 2006 being the relevant date on which the goods were exported. Where the statute provides a period of limitation, in the present case in Section 11B for a claim for rebate, the provision has to be complied with as a mandatory requirement of law."

Vide the above order, the division Bench of Hon'ble Bombay High Court has also discussed order of Hon'ble Madras High Court, relied upon by the applicant and after considering the same, it was finally held that time limit of one year is applicable to cases of rebate.

11. In view of above position, the rebate claim filed after stipulated time limit of one year is time barred in terms of section 11B of Central Excise Act, 1944 and rebate claims are rightly rejected as time barred. Therefore, Government find no infirmity in the impugned orders and upholds the same.

12. The revision applications are rejected in terms of above.

13. So, ordered.




(D.P. Singh)

Joint Secretary to the Govt. of India

M/s Polymedicure Ltd.,
Plot No. 104-105, Sector-59,
Ballabgarh, Faridabad.

ATTESTED



(भगवत शर्मा/Bhagwat Sherna)
सहायक का.स.डी./Assistant Commissioner
C.B.E.C. O.S.D. (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Revenue)
भारत सरकार/Govt. of India
नई दिल्ली/Naya Delhi

Order No. 1638-1642 /12-Cx dated 3-12-2012

Copy to:

1. The Commissioner of Central Excise, Delhi-IV, New C.G.O Complex, N.H.IV, Faridabad-121001.
2. The Commissioner of Central Excise (Appeals), Delhi-IV, New C.G.O Complex, N.H.IV, Faridabad-121001.
3. The Assistant Commissioner, Central Excise, Division-IV, New C.G.O Complex, N.H.IV, Faridabad.
4. PS to JS (RA)
5. Guard File.
6. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)